

L. Glass
148365



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Resource Consultants, Inc.

File: B-250241; B-250241.2

Date: January 11, 1993

William W. Goodrich, Jr., Esq., Gerald H. Werfel, Esq., and George J. Kotlarz, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.

James C. Hughes, Esq., J. Andrew Jackson, Esq., and C. Patteson Cardwell, IV, Esq., for Pacer Systems, Inc., an interested party.

Eric A. Lile, Esq., and Steve R. Conway, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposal materially misrepresented commitment of key personnel is denied where awardee provided firm letters of commitment with consent of the listed individuals, confirmed the availability of these individuals prior to submitting its best and final offer, and nothing in the record suggests that the names were submitted in other than in good faith.

DECISION

Resource Consultants, Inc. (RCI) protests the award of a contract to Pacer Systems, Inc. under request for proposals (RFP) No. N61331-91-R-0078, issued by the Department of the Navy for engineering and technical support for Amphibious Warfare, Strategic Sealift Programs, and United States Marine Corps Programs. RCI essentially asserts that Pacer's proposal materially misrepresented its intention with respect to the employment of contingent hires for key personnel positions.

We deny the protest.

The RFP was issued on September 27, 1991, and solicited proposals for a cost-plus-fixed-fee, indefinite-quantity contract for a base year and four 1-year options. The RFP required offerors to propose skilled, experienced, professional and/or technical personnel for accomplishment of the work to be performed under the contract. The personnel qualifications for the key personnel labor categories were outlined in the RFP. Offerors were required to submit resumes for key personnel positions, and the solicitation as amended required that proposed key personnel be either current employees of the offeror who will work on the contract or individuals who have agreed in writing since the issuance of the RFP to work for the offeror on this contract, if the offeror is awarded the contract. To receive credit in the evaluation for a contingent hire, offerors were required to provide a resume and a certification that the individual was committed to the employ of the offeror.

Four proposals were received by the February 7, 1992, closing date. After initial evaluation and discussions, Best and Final Offers (BAFO) were received. The BAFOs from RCI, Pacer and another offeror were found acceptable. Of the 25 resumes required for key personnel positions, Pacer submitted 17 resumes of contingent new hires in its BAFO. Pacer submitted with its proposal a "Certification of Potential Employment" signed by each of these individuals which stated their agreement to accept employment with Pacer in a specific labor category at a specified salary. Two of Pacer's contingent hires were current employees of Pacer's proposed subcontractors. RCI proposed 14 contingent hires, two of whom were then employed by its proposed subcontractors. On August 31, the contract was awarded to Pacer because the agency concluded that Pacer's proposal offered the greatest value. On September 8, RCI filed this protest with our Office.

RCI essentially argues that Pacer misrepresented the status of key personnel to the government and should therefore be disqualified. Specifically, RCI alleges that Pacer never intended to employ the proposed contingent hires who were then employees of proposed subcontractors. RCI further contends that facts and circumstances concerning those two contingent hires show that these employees are extremely unlikely to sever long-standing relationships with their current employers at the salary levels specified in Pacer's proposal.

An offeror proposing to use specific individuals for key positions may not be awarded a contract where the offeror does not have the individuals' permission to use their names for those key positions and cannot provide a satisfactory explanation for its use of the names. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42. Similarly, an offeror has a responsibility to ascertain the current availability of personnel it proposes to use in performing a contract. ManTech Field Eng'g Corp., B-245886.4, Mar. 27, 1992, 92-1 CPD ¶ 309, recon. denied, B-245886.5, Aug. 7, 1992, 92-2 CPD ¶ 89.


On this record, we find no basis to conclude that Pacer proposed the use of individuals in key personnel positions whom it did not expect to hire upon award of the contract at the salary rates specified in the individuals' signed certificates. Pacer provided individual employee resumes and certifications for each of the 17 contingent hires it proposed for the key personnel positions and confirmed their availability prior to BAFO submission. These certifications show that each contingent hire was willing to work for Pacer at a specified labor rate. Although the protester points out that Pacer also had signed letters of intent from these same contingent hires that stated salary was subject to negotiation and asserts that this shows an intent on Pacer's part to misrepresent to the government the status of its salary negotiations with the proposed contingent hires, the record does not support that assertion. As explained in the affidavits and testimony of the Pacer manager responsible for the preparation and submission of Pacer's proposal, the general letter of intent and certification were sent in the same package to each contingent hire. VT 10:09:04. Salary negotiations were conducted after the contingent hires received the package; salary levels were agreed to as a result of those negotiations. The agreed upon salaries were then reflected in the certifications. No further salary negotiations were contemplated or conducted. VT 10:16:40. It thus is evident that the certifications represented the actual commitments of the contingent hires and that Pacer did not use the certifications to mislead the Navy.

RCI furnishes an affidavit from a current employee which states that a former subcontractor for Pacer told RCI that under a prior procurement, Pacer proposed subcontractor employees for key personnel positions for proposal purposes only, without any intent to actually hire them. There is no evidence in the record, however, to show that Pacer used this tactic in this procurement. Pacer included in its BAFO certifications for all 17 contingent hires, only two of which were proposed subcontractor employees, and nothing in the record indicates that these commitment forms were submitted in bad faith or without the consent of the individuals proposed. See TeleLink Research, Inc.,

B-247052, Apr. 28, 1992, 92-1 CPD ¶ 400; Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 77. There simply is no evidence in the record to show that Pacer never intended to hire proposed contingent hires or that it was engaging in "bait-and-switch" tactics. See Ultra Technology Corp., supra.

The fact that RCI finds it incredulous that the two subcontractor employees, who own property in another geographical area and have an extensive relationship with a current employer, would accept employment with Pacer in Florida at the stated salary rate does not establish that these individuals have no intention of accepting employment with Pacer. The record shows that Pacer reasonably expects that these individuals will satisfy their commitment to work for Pacer upon contract performance. There also is no evidence in the record to show that the salaries negotiated with Pacer are less than the salaries these individuals are currently receiving.

We find the evaluation and selection decision proper. Accordingly, the protest is denied.¹


for James F. Hinchman
General Counsel

¹RCI contends that it has been hampered in its efforts to present its case by its inability to interview any of Pacer's proposed contingent hires to, among other things, verify current salaries and determine the level of commitment to go to work for Pacer. RCI protested alleged wrongdoing on the part of the awardee without any concrete evidence in support of the allegations. Because of the seriousness of the allegations, we requested an agency report on the protest. The agency responded with a report including an affidavit from the Pacer employee responsible for preparation of the proposal and the hiring of the key personnel. We held a hearing and allowed RCI to question extensively this individual. Since RCI's initial protest provided no evidence of wrongdoing and the record before us strongly supports the agency's and awardee's position that there was no misrepresentation on the part of the awardee, we do not believe that the extensive discovery sought by RCI was warranted.